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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,693	12/17/2001	Bradford Brian Jensen	427600600056	2219

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EXAMINER

NEILS, PEGGY A

ART UNIT

PAPER NUMBER

2875

DATE MAILED: 09/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/022,693

Applicant(s)

JENSEN ET AL.

Examiner

Peggy A. Neils

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-12 is/are allowed.
- 6) ☒ Claim(s) 1-4 and 13-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 14 July 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- ☐ Interview Summary (PTO-413) Paper No(s). _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

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Response to Amendment

1. Applicant's arguments with respect to claims 1-4 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 4 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mininno et al.

Mininno et al shows a candle lamp assembly in Figure 4 which shows the lamp having a vertical longitudinal axis and a base which is oblong in shape and extends in a horizontal direction. As shown in Figure 2, the lamp is shown having a candlestick-shaped translucent tube projecting upward in an elongated vertical direction. The base is shown having a pair of elongated parallel sides. The battery is shown in Figure 1 as consisting of only one battery positioned in a manner to be parallel to the elongated sides of the base. Claim 1 states that the battery compartment is configured to receive batteries in an end to end horizontal arrangement and Claim 14 states that the base has arcuate sides connecting the parallel sides. The number of batteries used would not

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effect the operation of the lamp only how long the lamp can be illuminated before replacing the batteries, and hence is considered a design choice. Likewise, the arcuate sides do not effect the operability of the lamp but merely provide a different ascetic view of the base. The base of Mininno et al accomplishes the same desired result as the claimed base and therefore arcuate sides are also considered a design choice.

4. Claims 2, 3 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mininno et al as applied to claim 1 above, and further in view of Blackerby.

Blackerby teaches that it is known in the art to have a single lamp apparatus with a translucent shaped flame top and with a light emitting diode (LED) as the light source. Mininno et al shows in Figure 2 a candle shaped lamp assembly but with a wick instead of a flame at the end of the candle and shows a plurality of candles in the lighting system. It would be obvious to one skilled in the art that Mininno et al could modified to have a flame shaped cap at the end of the candle and to use an LED in the same manner as taught by Blackerby because both references are directed to the same type of ornamental illuminated candle structures. Likewise the use of one or a plurality of lamps is shown by the prior art and is a feature considered a design choice since both types are well known. Applicant's comments regarding the use of Blackerby have been considered but are non-persuasive. Applicant primarily argued that Blackerby did not show the "oblong base." The examiner does not disagree. However, Blackerby is not being applied for the physical structure of the base but merely the use of the LED and the flame cap.

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Allowable Subject Matter

5. Claims 5-12 are allowed for the reasons set forth in the last Office action.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

7. Any questions regarding this Office action should be directed to Examiner Neils at (703) 308-6554 on a Tuesday or Thursday.



**Y. MY QUACH-LEE
PRIMARY EXAMINER**